

(4) state specifications in terms that enable and encourage bidders and offerors to supply commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items in response to the executive agency solicitations;

(5) revise the executive agency's procurement policies, practices, and procedures not required by law to reduce any impediments in those policies, practices, and procedures to the acquisition of commercial items; and

(6) require training of appropriate personnel in the acquisition of commercial items.

**(c) Preliminary market research**

(1) The head of an executive agency shall conduct market research appropriate to the circumstances—

(A) before developing new specifications for a procurement by that executive agency; and

(B) before soliciting bids or proposals for a contract in excess of the simplified acquisition threshold.

(2) The head of an executive agency shall use the results of market research to determine whether there are commercial items or, to the extent that commercial items suitable to meet the executive agency's needs are not available, nondevelopmental items other than commercial items available that—

(A) meet the executive agency's requirements;

(B) could be modified to meet the executive agency's requirements; or

(C) could meet the executive agency's requirements if those requirements were modified to a reasonable extent.

(3) In conducting market research, the head of an executive agency should not require potential sources to submit more than the minimum information that is necessary to make the determinations required in paragraph (2).

(June 30, 1949, ch. 288, title III, §314B, as added Pub. L. 103-355, title VIII, §8203, Oct. 13, 1994, 108 Stat. 3394.)

**EFFECTIVE DATE**

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

**COMPTROLLER GENERAL REVIEW OF FEDERAL GOVERNMENT USE OF MARKET RESEARCH**

Section 8305 of Pub. L. 103-355 provided that:

“(a) **REPORT REQUIRED.**—Not later than 2 years after the date of the enactment of this Act [Oct. 13, 1994], the Comptroller General of the United States shall submit to the Congress a report on the use of market research by the Federal Government in support of the procurement of commercial items and nondevelopmental items.

“(b) **CONTENT OF REPORT.**—The report shall include the following:

“(1) A review of existing Federal Government market research efforts to gather data concerning commercial and other nondevelopmental items.

“(2) A review of the feasibility of creating a Government-wide data base for storing, retrieving, and analyzing market data, including use of existing Federal Government resources.

“(3) Any recommendations for changes in law or regulations that the Comptroller General considers appropriate.”

**§ 265. Contractor employees: protection from reprisal for disclosure of certain information**

**(a) Prohibition of reprisals**

An employee of a contractor may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a Member of Congress or an authorized official of an executive agency or the Department of Justice information relating to a substantial violation of law related to a contract (including the competition for or negotiation of a contract).

**(b) Investigation of complaints**

A person who believes that the person has been subjected to a reprisal prohibited by subsection (a) of this section may submit a complaint to the Inspector General of the executive agency. Unless the Inspector General determines that the complaint is frivolous, the Inspector General shall investigate the complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the person, the contractor concerned, and the head of the agency. In the case of an executive agency that does not have an Inspector General, the duties of the Inspector General under this section shall be performed by an official designated by the head of the executive agency.

**(c) Remedy and enforcement authority**

(1) If the head of an executive agency determines that a contractor has subjected a person to a reprisal prohibited by subsection (a) of this section, the head of the executive agency may take one or more of the following actions:

(A) Order the contractor to take affirmative action to abate the reprisal.

(B) Order the contractor to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(C) Order the contractor to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.

(2) Whenever a person fails to comply with an order issued under paragraph (1), the head of the executive agency shall file an action for enforcement of such order in the United States district court for a district in which the reprisal was found to have occurred. In any action brought under this paragraph, the court may grant appropriate relief, including injunctive relief and compensatory and exemplary damages.

(3) Any person adversely affected or aggrieved by an order issued under paragraph (1) may obtain review of the order's conformance with this subsection, and any regulations issued to carry out this section, in the United States court of

appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review may be filed more than 60 days after issuance of the order by the head of the agency. Review shall conform to chapter 7 of title 5.

**(d) Construction**

Nothing in this section may be construed to authorize the discharge of, demotion of, or discrimination against an employee for a disclosure other than a disclosure protected by subsection (a) of this section or to modify or derogate from a right or remedy otherwise available to the employee.

**(e) Definitions**

In this section:

(1) The term “contract” means a contract awarded by the head of an executive agency.

(2) The term “contractor” means a person awarded a contract with an executive agency.

(3) The term “Inspector General” means an Inspector General appointed under the Inspector General Act of 1978.

(June 30, 1949, ch. 288, title III, §315, as added Pub. L. 103-355, title VI, §6006, Oct. 13, 1994, 108 Stat. 3365; amended Pub. L. 104-106, div. D, title XLIII, §4321(e)(8), Feb. 10, 1996, 110 Stat. 675.)

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsec. (e)(3), is Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1996—Subsec. (b). Pub. L. 104-106 substituted “Inspector General” for “inspector general” after “does not have an” and after “the duties of the”.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

**§ 266. Merit-based award of grants for research and development**

**(a) Policy**

It is the policy of Congress that an executive agency should not be required by legislation to award a new grant for research, development, test, or evaluation to a non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be awarded through merit-based selection procedures.

**(b) Rule of construction**

A provision of law may not be construed as requiring a new grant to be awarded to a specified non-Federal Government entity unless that provision of law—

(1) specifically refers to this subsection;

(2) specifically identifies the particular non-Federal Government entity involved; and

(3) specifically states that the award to that entity is required by such provision of law in contravention of the policy set forth in subsection (a) of this section.

**(c) New grant defined**

For purposes of this section, a grant is a new grant unless the work provided for in the grant is a continuation of the work performed by the specified entity under a preceding grant.

**(d) Inapplicability to certain grants**

This section shall not apply with respect to any grant that calls upon the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on such matters to Congress or any agency of the Federal Government.

(June 30, 1949, ch. 288, title III, §316, as added Pub. L. 103-355, title VII, §7203(b)(2), Oct. 13, 1994, 108 Stat. 3381; amended Pub. L. 104-106, div. D, title XLIII, §4321(e)(9), Feb. 10, 1996, 110 Stat. 675.)

AMENDMENTS

1996—Pub. L. 104-106 made technical amendment to section catchline in original.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

**§ 266a. Share-in-savings contracts**

**(a) Authority to enter into share-in-savings contracts**

(1) The head of an executive agency may enter into a share-in-savings contract for information technology (as defined in section 11101(6) of title 40) in which the Government awards a contract to improve mission-related or administrative processes or to accelerate the achievement of its mission and share with the contractor in savings achieved through contract performance.

(2)(A) Except as provided in subparagraph (B), a share-in-savings contract shall be awarded for a period of not more than five years.

(B) A share-in-savings contract may be awarded for a period greater than five years, but not more than 10 years, if the head of the agency determines in writing prior to award of the contract that—

(i) the level of risk to be assumed and the investment to be undertaken by the contractor is likely to inhibit the government from obtaining the needed information technology competitively at a fair and reasonable price if the contract is limited in duration to a period of five years or less; and

(ii) usage of the information technology to be acquired is likely to continue for a period of time sufficient to generate reasonable benefit for the government.

(3) Contracts awarded pursuant to the authority of this section shall, to the maximum extent